IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3164 OF 2006

Akaram Babu Shinde ..Petitioner

Vs.

Jaysing Shripati Patil & Anr. ..Respondents

Mr.A.M.Kulkarni for the petitioner

Mr.P.D.Dalvi for respondent no.1

CORAM : A.P.DESHPANDE, J

DATED : 1ST DECEMBER, 2006

P.C.:

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The present petitioner is original defendant no.1 whereas respondent no.1 is original plaintiff. Respondent no.1 instituted a suit against the petitioner by contending that the width of lane in between C.S.No.36 and C.S.No.35 is 7 ft and the plaintiff has a right to have approach from the said lane unobstructed by the defendant. The

respondent / plaintiff is residing in City Survey No.36 whereas the plot of land of the petitioner, which is on northern side is City Survey No.35. The controversy is mainly in regard to the width of the lane which passes between City Survey No. 36 and City Survey No.35.

3. On an application moved by the plaintiff, the trial court has permitted appointment of T.I.L.R as Commissioner for carrying out measurement of City Survey no.35 which is owned by the petitioner /defendant no.1. Having regard to the dispute involved, it is obvious that both the plots bearing no. 36 and 35 are required to be measured. The controversy is not capable of being resolved in the absence of measurement of both the plots. In this view of the matter, the order appointing T.I.L.R. as Court Commissioner cannot be faulted. However, impugned order needs to be modified by issuing further direction to measure City Survey No. 36 in addition to City Survey No. CS 35. With this modification, writ petition is partly allowed and disposed of. Rule made absolute.

(SHRI A.P.DESHPANDE, J)